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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re D.F., a Person Coming Under the Juvenile Court Law.	B289424
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DAVID F., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK89501A)

APPEAL from a judgment of the Superior Court of Los Angeles County, Nichelle Blackwell, Commissioner. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Lori N. Siegel, under appointment by the Court of Appeal, for Minor.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel and Peter Ferrera, Principal Deputy County Counsel for Plaintiff and Respondent.

David F. (father) appeals an order of the juvenile court that terminated court jurisdiction over his son, D.F., granted full legal and physical custody to D.F.'s mother, A.G. (mother), and limited father's visits to one hour each month. We find that father forfeited several of his claims of error by failing to raise them in the juvenile court; as to the rest, we find no abuse of discretion. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Dependency Proceedings

D.F. was born in October 2008. In 2011, the juvenile court sustained allegations that mother and father had a history of domestic violence in D.F.'s presence, and that father abused alcohol while D.F. was in his care. Mother completed all of her court-ordered programs; father failed to enroll in a drug and alcohol program and, during the period of supervision, was arrested for domestic battery. In May 2013, the court granted mother sole physical and legal custody of D.F. and terminated its jurisdiction.

B. Current Petition

In May 2015, Los Angeles County Department of Children and Family Services (DCFS) received referrals alleging neglect and abuse of D.F. by father and mother. DCFS subsequently filed a juvenile dependency petition alleging jurisdiction over

D.F. pursuant to Welfare and Institutions Code[1] section 300, subdivisions (a) and (b).

In February 2016, the juvenile court sustained two section 300, subdivision (b) counts, finding that mother and father had an unresolved history of domestic violence in D.F.'s presence, and that father was under the influence of alcohol while caring for D.F. The juvenile court ordered D.F. removed from his parents' custody and placed with his paternal aunt and uncle.

In August 2016, DCFS reported that D.F. had spent the school year at the home of his paternal aunt and uncle, and the summer with his maternal grandparents. He was reported to be thriving in both placements. Father had not enrolled in any court-ordered programs, telling DCFS that he should not have to engage in programs because "he is not the problem." He was reported to be confrontational and aggressive with D.F.'s caregivers, sending emails described by DCFS as "aggressive, harassing, and threatening in nature." An evaluator expressed concern about father's dependence on alcohol and opined that "there may be an underlying personality disorder in the realm of narcissism, but this might be simply a byproduct of substance abuse."

D.F. was placed with his maternal grandparents in northern California in September 2016, where he was described as alert, active, and social. Mother and father continued to struggle with co-parenting, and although father reported that he had engaged in some court-ordered services, including individual counseling and drug/alcohol rehabilitation, he did not provide DCFS with verification that he had completed those programs.

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[1] All subsequent statutory references are to the Welfare and Institutions Code.

Father intermittently tested negative for drugs and alcohol, but he missed many scheduled tests. Father had not visited D.F. since he was placed with the maternal grandparents.

In February 2017, DCFS recommended that the court terminate the parents' reunification services, set a section 366.26 hearing, and designate the maternal grandparents as D.F.'s legal guardians. At a subsequent hearing, the court found father in minimal compliance, and mother in partial compliance, with the case plan, and it ordered DCFS to continue to provide family reunification services to both parents.

In August 2017, DCFS reported that D.F. continued to thrive in his grandparents' home. Father had moved to northern California in March and was visiting D.F. on a weekly basis. Father's interactions with his son were described as appropriate. Prior to his move, father had completed a six-month drug and alcohol program, a 12-week parenting program, and a 26-week domestic violence program, and had engaged in some individual therapy. However, since moving to northern California, father had ceased participating in any court-ordered services. Specifically, father had not enrolled in a substance abuse treatment aftercare program, had not drug-tested since early April, and was not continuing with individual therapy.

In August 2017, DCFS again recommended that the juvenile court terminate the parents' reunification services and set a section 366.26 hearing. Instead, on August 15, 2017, the juvenile court ordered D.F. placed with mother under DCFS supervision.

C. Termination of Juvenile Court Jurisdiction

In February 2018, DCFS advised the court that mother had made arrangements for D.F. to continue living with the maternal

grandparents, where he was receiving good care and supervision. Mother regularly visited D.F. and was reported to have a close and loving bond with him. Since the August 2017 hearing, father had refused to meet with the case worker, had missed every scheduled substance abuse test, and had not provided DCFS with documentation demonstrating that he had completed his court-ordered case plan. Further, father had not had any visits with D.F. since the August 2017 hearing, emailing the maternal grandmother that he was moving back to southern California and was " 'making a decision to not make any more efforts to see [D.F.].' " DCFS reported that the maternal grandmother had been unwilling to continue to monitor father's visits, and that father had not been able to find a monitor due to his "eccentric behavior."

DCFS recommended an additional three months of supervision. It noted that mother had made an appropriate plan for D.F. by placing him with the maternal grandparents, but said mother had not demonstrated her ability to provide adequate care and supervision for him on her own because she was not the primary caregiver. DCFS also recommended that father's family reunification services be terminated, noting that father "has not made further progress in his court ordered case plan activities, and it appears that he has not internalized, nor had significant insights, regarding the child endangerment issues that brought this case to the attention of the court."

Father did not appear at the February 6, 2018 hearing, but he was represented by counsel. At that hearing, the juvenile court asked why dependency jurisdiction should not be immediately terminated. County counsel responded that DCFS was requesting an additional three months of supervision, noting

that if mother was not able to care for D.F. by the end of that period, maternal grandmother intended to seek a guardianship through the probate court. The court said it did not appear there was a continued need for court supervision, and, in any event, maternal grandmother could not seek a probate guardianship while the dependency case was open. Mother agreed that jurisdiction should be terminated. Father's counsel said he "would like to terminate jurisdiction," but objected to termination of father's enhancement services.

D.F.'s counsel inquired as to the proposed terms of an order terminating jurisdiction, and the court said it intended to grant sole legal and physical custody to mother, with monthly monitored visits for father. After a break in the proceedings, during which D.F.'s counsel spoke with the maternal grandmother, D.F.'s counsel said he agreed with the court's tentative order, and county counsel reiterated DCFS's objection to an immediate termination of jurisdiction. The court then asked to hear from father's counsel, who said he "would submit on the court's tentative," but "would ask that [father] have joint legal custody and also have visitation in the frequency of two times per month."

The court adopted its tentative ruling, stating that it was terminating juvenile court jurisdiction, giving mother full legal and physical custody of D.F., and granting father monthly monitored visits. The court stayed its order pending receipt of a juvenile custody order.

On February 8, 2018, the court entered a final judgment and lifted its stay.

DISCUSSION

Father contends (1) his due process rights were violated because he did not receive proper notice of the court's intention to terminate its jurisdiction, and (2) the juvenile court abused its discretion by terminating its jurisdiction, granting mother sole legal and physical custody, and limiting father to one hour of monitored visitation each month. For the reasons that follow, we find no abuse of discretion.

I.
Father Received Proper Notice of the February 6, 2018 Hearing

Father contends his due process rights were violated because he was not provided notice of the court's intention to terminate its jurisdiction and award mother sole legal and physical custody of D.F. Although father concedes that he received notice of the February 6 hearing, he says the hearing notice stated DCFS was not recommending a change of placement or custody, and DCFS's status review report recommended continuing jurisdiction for three more months. Thus, he urges, he had no reason to anticipate that the juvenile court would address termination of jurisdiction and custody orders.

We conclude that father received proper notice of the February 6 hearing. As required by section 292, subdivision (d), father was served a notice that advised him of the hearing and of his rights to appear, to be represented by counsel, and to present evidence. The notice also advised that the court would "*consider* the recommendation of the social worker" and "make an order concerning" D.F. (Italics added.) We are not aware of any legal authority, nor does father cite to any, suggesting father was also

entitled to notice of the court's intended rulings or to be told that the court might rule inconsistently with the social worker's recommendation. Accordingly, we find no defect in notice.

In any event, even if notice were defective, father forfeited the issue by failing to raise it in the juvenile court. "An appellate court ordinarily will not consider challenges based on procedural defects or erroneous rulings where an objection could have been but was not made in the trial court. [Citation.] . . . . The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court so that they may be corrected. [Citation.] Although forfeiture is not automatic, and the appellate court has discretion to excuse a party's failure to properly raise an issue in a timely fashion [citation], in dependency proceedings, where the well-being of the child and stability of placement is of paramount importance, that discretion 'should be exercised rarely and only in cases presenting an important legal issue.' [Citation.]" (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.)

When a parent had the opportunity to present an issue to the juvenile court and failed to do so, appellate courts routinely refuse to exercise their discretion to consider the matter on appeal because defective notice and the consequences flowing from it may easily be corrected if promptly raised in the juvenile court. Thus, for example, in *In re Wilford J.*, *supra*, 131 Cal.App.4th 742, 746–747, our colleagues in Division Seven held that although a juvenile court had erred by proceeding with a jurisdictional hearing of which a father had not received notice and at which he had neither appeared nor been represented by counsel, the father forfeited the defect in notice by failing to challenge it at subsequent hearings. (*Id.* at p. 754.) By failing to

timely challenge the defect in the juvenile court, the father "deprived the juvenile court of the opportunity to correct the mistake." (*Ibid.*)

In this case, although father was not personally present at the February 6 hearing, he was represented by counsel. Significantly, father's counsel did not raise any defect in notice or seek a continuance of the hearing to allow father to be present. Instead, counsel addressed the court's tentative order on the merits, stipulating to it in significant part. Accordingly, the notice issue is forfeited.

II.

The Exit Order Was Not an Abuse of Discretion

Father contends the juvenile court abused its discretion by terminating its jurisdiction, granting mother sole legal and physical custody of D.F., and limiting father to one hour of monitored visitation each month.

We decline to reach the merits of the termination of jurisdiction. As we have said, a parent forfeits a claim of error by failing to timely raise it in the juvenile court. Here, father's counsel agreed at the February 6 hearing that the juvenile court should terminate its jurisdiction, stating, "Your Honor, I would like to terminate jurisdiction, if possible." Accordingly, father forfeited any objection to that ruling. (See *In re Wilford J.*, *supra*, 131 Cal.App.4th at p. 754.)

We will reach the merits of the custody and visitation order, to which father's counsel objected, but we conclude there was no abuse of discretion. Unlike family courts, juvenile courts crafting exit orders (§ 362.4, subd. (a); *In re Roger S.* (1992) 4 Cal.App.4th 25, 30) focus on the child's best interests, unconstrained by " 'any preferences or presumptions' " about

parental custody (*In re John W.* (1996) 41 Cal.App.4th 961, 972, italics omitted). "In juvenile dependency proceedings the child is involved in the court proceedings because he or she has been abused or neglected. Custody orders are not made until the child has been declared a dependent of the court and in many cases . . . the child has been removed from the parents upon clear and convincing evidence of danger. The issue of the parents' ability to protect and care for the child is the central issue. The presumption of parental fitness that underlies custody law in the family court just does not apply to dependency cases. Rather the juvenile court, which has been intimately involved in the protection of the child, is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions." (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.)

Accordingly, when fashioning exit orders, juvenile courts have broad discretion to decide what would best serve and protect the child's interests, and we will not disturb an exit order unless the court abuses that discretion. (*In re I.G.* (2014) 226 Cal.App.4th 380, 386–387.) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319; *id.* at p. 318 [court abuses its discretion if its order is " ' "arbitrary, capricious, or patently absurd" ' "].)

On appeal, father has not demonstrated that the custody and visitation order was not in D.F.'s best interest. While father asserts that he made "substantial progress in a number of areas"

of his case plan, that fact, standing alone, does not suggest that D.F. would have been better served by a different custody or visitation order.

Moreover, the overwhelming evidence before the juvenile court supported the juvenile court's conclusion that granting mother sole legal and physical custody and limiting father's visitation was in D.F.'s best interest. Mother had made an appropriate plan to place D.F. with the maternal grandparents, where he was thriving. The social worker observed that mother's interactions with D.F. were "appropriate and skillful," and mother and child "appeared to have a close and loving bond." In contrast, during the six months immediately preceding entry of the custody order, father had not visited D.F., had refused to meet with the social worker, had refused to drug test, and had failed to provide evidence that he had completed his court-ordered programs. Further, father had demonstrated that he was either unable or unwilling to work cooperatively with mother or D.F.'s caregivers. DCFS reported that father and mother "struggle[d] with co-parenting," and that father "sp[oke] poorly of the mother[,] stat[ing] that the child should not be returned to the mother as a result of her poor decisions." Father continued to fail to take responsibility for his actions, to blame others for his loss of custody of D.F., and had threatened to sue DCFS and his social workers, calling them "the Devil," "abusers," and "criminals." Father's contacts with D.F.'s caregivers, as well as with the social workers, were described as "aggressive, harassing, and threatening in nature." As a result of father's "eccentric behaviors (that have included harassment, derogatory remarks, excessive amounts of emails, and sexual innuendos)," the maternal grandmother was unwilling to continue to monitor

father's visits, and father had been unable to find an alternative monitor.

Father also contends that the juvenile court erred in applying a rebuttable presumption "that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interests of the child." (Fam. Code, § 3044.) Because father did not raise that argument in the juvenile court, we conclude he has forfeited it on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 ["a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court"].)

For all of these reasons, we conclude the juvenile court's denial of joint custody was supported by substantial evidence.

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J. EGERTON, J.